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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/389,428	09/03/1999	HANS-JUERGEN KUHR	BMID9813US	5380

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EXAMINER

NGO, LIEN M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/26/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/389,428

Applicant(s)

KUHR ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-27, 29-32, 43-51, 53 and 54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-25, 27, 29, 30, 43, 46-48, 50, 51 and 54 is/are rejected.
- 7) ☒ Claim(s) 26, 31, 32, 44, 45, 49 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22-25, 27, 29, 30, 43, 46, 48, 50, 51 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Raybin (3,244,317).

In regard to claims 22, 23, 25, 43 and 54, Raybin discloses, in figs. 1-10, a system the is capable of collecting body fluid comprising a lancing device 15, a lancet magazine 1 storing a plurality of lancets 7 having sterile tip, an opening 24 into which the lancing device can be inserted to remove an individual lancet from the lancet magazine (best seen in fig. 4) in a first direction substantially parallel to a longitudinal axis of the lancing device, and a transport device (the last lancet 7 located adjacent to the spring 10) adapted to travel within the lancet magazine in a second direction substantially perpendicular to the first direction to transport lancets in the lancet device. The lancets are arranged next to one another in pair-wise contact.

In regard to claim 24 and 27, the lancet magazine has an elongated, flat cuboid shape.

In regard to 29 and 30, the transport device is driven by a manually operated slide 3 and a spring mechanism 10.

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In regard to claim 46 and 48, the lacing device comprise a holding tongue 16 which is inserted into the opening to remove a lancet from the lancet magazine.

In regard to claims 50 and 51, each lancet comprises a lancet body and opposed recesses 17, 18, a pin 21.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raybin in view of Abidin et al. (5,662,669).

Raybin does disclose the lancing device comprising a barb and an ejector.

Abidin et al. teach, in figs. 37-48, a lancing device comprising a barb 316, 312 and an ejector 311.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Raybin lancing device comprising a barb and an ejector, as taught by Abidin et al., in order to facilitate of removal of the lancet thereby voiding manual contact with the lancet.

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Allowable Subject Matter

5. Claims 26, 31, 32, 44, 45, 49 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 9/22/03 have been fully considered but they are not persuasive.

Applicant argues that the reference Raybin does not disclose the lancet magazine having an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine in a first direction substantially parallel to a longitudinal axis of the lancing device, and a transport device adapted to travel within the lancet magazine in a second direction substantially perpendicular to the first direction. However, that is not found persuasive as pointed out in the rejection of the paragraph 2 above.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Ngo whose telephone number is (703) 305-0294. The examiner can normally be reached Monday through Friday from 8:00 AM to 5:00 PM.

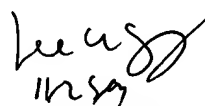
If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Lee Young, can be reached at (703)308-2572. The Group FAX number is (703) 305-3579.

Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-1148.



Lien Ngo

November 21, 2003


LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700